

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

JUN 7 1993

DOCKET FILE COPY ORIGINAL

Dennis F. Begley, Esquire
Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

92-309 /

Dear Mr. Begley:

This is in response to your request for refund of the hearing fee submitted by Webber/Moore Broadcasting Company Limited Partnership (Webber), former applicant for a new television station at Jacksonville, North Carolina.

You state that Webber and the two competing applicants for the station at Jacksonville filed a settlement agreement with the presiding Administrative Law Judge prior to the deadline for filing Notices of Appearance in the comparative proceeding designated to select the licensee at Jacksonville. The presiding ALJ approved the settlement, granted a construction permit for the station to the applicant designated in the settlement agreement, and dismissed the two remaining applicants, including Webber.

Section 1.1111(b)(4) of the Commission's rules provides for

Dennis F. Begley, Esquire

2.

Therefore, a check, drawn in the amount of \$6,760.00 and made payable to the maker of the original check, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

A handwritten signature in cursive script, reading "Marilyn J. McDermett".

Marilyn J. McDermett
Associate Managing Director
for Operations

Jim

1204088170347001

LAW OFFICES
REDDY, BEGLEY & MARTIN
1001 22ND STREET, N.W.
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(1915-1990)

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April 26, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Webber/Moore Broadcasting Company Limited Partnership
File No. BPCT-920114KG
Fee Refund Request

Dear Ms. Searcy:

On behalf of Webber/Moore Broadcasting Company Limited Partnership ("Webber/Moore"), a former applicant for a new television broadcast station at Jacksonville, North Carolina, this letter is to request a refund of its hearing fee of \$6,760.00 submitted to the Commission on April 6, 1992 (received on April 7, 1992). In accordance with the attached Memorandum Opinion and Order of Administrative Law Judge Joseph Chachkin, Webber/Moore's application was dismissed today pursuant to a settlement agreement.

Webber/Moore's application was dismissed by the presiding Judge pursuant to a settlement agreement filed with him by the notice of appearance deadline. (See attached Notice of Appearance filed by Webber/Moore.) The agreement provided for the dismissal of all but one of the applicants and the single remaining applicant was immediately grantable. Accordingly, Webber/Moore is eligible for a full refund of its hearing fee pursuant to Section 1.1111(c)(4) of the Commission's rules.

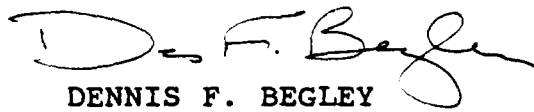
The Commission's check should be made payable to Webber/Moore Broadcasting Company Limited Partnership and mailed to it at 601 S. Kings Drive, Suite AA, Charlotte, North Carolina 28204.

Make check
payable to
Webber

Ms. Donna R. Searcy
April 26, 1993
Page 2

Should any questions arise in connection with this matter,
please communicate directly with this office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. F. Begley".

DENNIS F. BEGLEY
Counsel for
WEBBER/MOORE BROADCASTING COMPANY
LIMITED PARTNERSHIP

DFB:mlp

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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31340

In re Applications of)	MM DOCKET NO. 92-309
)	
LOCAL TELEVISION ASSOCIATES, INC.)	File No. BPCT-911106KF
)	
CHARLES FITZGERALD)	File No. BPCT-920114KF
)	
WEBBER/MOORE BROADCASTING COMPANY)	File No. BPCT-920114KG
LIMITED PARTNERSHIP)	
)	
For Construction Permit for a New Commer-)	
cial Television Station on Channel 35)	
in Jacksonville, North Carolina)	

MEMORANDUM OPINION AND ORDER

Issued: April 22, 1993

Released: April 26, 1993

1. Under consideration are "Joint Motion For Approval Of Settlement" filed February 1, 1993 by Local Television Associates, Inc. (LTA), Charles Fitzgerald (Fitzgerald), and Webber/Moore Broadcasting Company, Limited Partnership (Webber/Moore), Supplement To Joint Request For Approval Of Agreement filed February 5, 1993 by LTA, Supplement To Joint Request For Approval Of Agreement filed February 9, 1993 by Webber/Moore, Mass Media Bureau's Comments On Joint Motion For Approval Of Settlement And Related Pleadings filed February 19, 1993, Supplement To Joint Request For Approval Of Settlement Agreement filed April 6, 1993 by Fitzgerald and LTA, Comments Of Webber/Moore Broadcasting Company Limited Partnership filed April 6, 1993, Supplement filed April 8, 1993 by LTA, and Supplement To Joint Motion For Approval Of Settlement Agreement And Dismissal Of Application Of Charles Fitzgerald filed April 12, 1993 filed by Fitzgerald, Supplement To Settlement Affidavit filed April 14, 1993 filed by Fitzgerald; "Petition For Leave To Amend And Request For Authority For Satellite Operation" filed February 1, 1993 by LTA, Supplement To Petition For Leave To Amend filed February 9, 1993 by LTA, Supplement To Petition For Leave To Amend And Request For Authority For Satellite Operation filed April 6, 1993 by LTA, and Mass Media Bureau's Comments On Supplement To Petition For Leave To Amend And Request For Authority For Satellite Operation filed April 15, 1993; and "Technical Amendment" filed February 5, 1993 by Fitzgerald.

2. LTA seeks approval of an agreement providing for the grant of its application and the dismissal of the Fitzgerald and Webber/Moore application in exchange for monetary consideration.¹ LTA also seeks permission to operate

¹ The settlement agreement originally provided for the merger of the Fitzgerald and LTA applications. The supplement to the joint request eliminated the merger and provided instead for the dismissal of the Fitzgerald application in exchange for monetary consideration.

as a satellite of LTA's station WFXI-TV, Morehead City, North Carolina. ²

3. The settlement agreement provides for reimbursement of Webber/Moore's expenses in preparing and prosecuting its application in an amount of up to \$12,000 and to Fitzgerald in an amount up to \$30,000. Also, the agreement provides for an additional payment of \$6,760 to Fitzgerald should he be unsuccessful in obtaining a refund of his hearing fee. Webber/Moore and Fitzgerald have established that the amount to be reimbursed by LTA does not exceed their reasonable and prudent expenses. Additionally, the parties have established that dismissal of Webber/Moore's and Fitzgerald's applications and the grant of LTA's application is in the public interest since it will facilitate prompt initiation of a new service in Jacksonville and the applications were not filed for an improper purpose.

4. The settlement reached by the parties is contingent on the grant of a petition for a leave to amend filed February 1, 1993 seeking acceptance of an amendment permitting the proposed Jacksonville station to operate as a satellite of station WFXI(TV). ³ In its Satellite Policy Statement, 6 FCC Rcd 4212, 4213-4214 (1991), the Commission stated that applicants for television satellite status are entitled to a presumption that the proposed satellite operation is in the public interest if the applicants meet the following three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operation is ready and able to construct or to purchase and operate the satellite as a full-service station. Here, there is no city grade overlap and the proposed station would provide service to an underserved area. ⁴ Thus, the first two hurdles are met.

5. In satisfaction of the third criteria, LTA argues that the operation of the Jacksonville station as a full-service station is not economically feasible. In support of this proposition LTA submits historical market data; the declaration of Millard S. Younts, a media broker familiar with the market; a declaration and study prepared by Susan Harrison of Harrison, Bond & Pecaro, a nationally known firm specializing in broadcast financial analysis; local governmental economic data; the declarations of the principals of the three

² The Bureau supports the requests for relief.

³ The amendment also seeks to amend LTA's technical showing in order to adopt the Fitzgerald technical proposal and to amend the application to delete the divestiture commitment for station WFXI(TV). Good cause has been shown for grant of the requested relief. Also included in the amendment are steps proposed to effectuate the merger between LTA and Fitzgerald which are now moot and will be dismissed.

⁴ Applicants can demonstrate that the area is underserved using one of two tests. The first is a "transmission test" in which the proposed satellite's community of license is considered underserved if two or fewer full-service stations are already licensed to it. Satellite Policy Statement, 6 FCC Rcd at 4215. Only one full time station, WUNM-TV is licensed to Jacksonville, WUNM is a satellite of WUNC-TV, Chapel Hill, North Carolina.

applicants; and supporting Commission precedent. On the basis of LTA's extensive showing, the Presiding Judge concludes that LTA has convincingly demonstrated that operation of the Jacksonville station as a full service station is not economically viable and that the proposed satellite operation is in the public interest.

6. Jacksonville is a community of some 28,780 persons. Jacksonville is located in Onslow County, which is along the Atlantic coast a considerable distance to the south of the center of the Greenville-New Bern-Washington market, where the Jacksonville facility would be located. The market, ADI number 104, is already served by four VHF stations and an independent UHF station, WYDO(TV). WYDO(TV), in order to be economically viable, has entered into an LMA, rebroadcasting WFXI(TV) during a substantial portion of the day. Moreover, the channel at issue in this proceeding is available only because a prior construction permit for the channel was cancelled in March 1991. Also, other construction permit applications in, and just outside the Greenville-New Bern-Washington market have met similar fates. As pointed out by LTA, the Commission has granted authority for unbuilt television stations to operate as satellites in markets considerably larger than the one involved here including the top 25

9. Finally, LTA has submitted the declaration of Millard Younts, a media broker familiar with the market. Younts asserts that he has made a number of inquiries as to the purchase of a stand-alone UHF station in the market and has received no indication of interest; that over the past six months two commercial television stations in the market have been offered by his company as possible for sale and none of these inquiries have ripened into even an expression of interest to buy; and that based on his experience, no prudent person would wish to build or operate a new UHF station in this market. Younts' declaration buttresses the conclusion that no alternative operator is ready and able to construct a full-service UHF station. Accordingly, LTA's request to operate the Jacksonville station as a satellite of WFXI(TV) will be granted subject to the condition that a main studio for the Jacksonville station is maintained for that community.⁶

Accordingly, IT IS ORDERED, That the "Petition For Leave To Amend And Request For Authority For Satellite Operation" filed February 1, 1993 IS GRANTED to the extent of accepting LTA's amended technical showing adopting the Fitzgerald technical proposal, deleting the divestiture commitment for station WFXI(TV), Morehead City, North Carolina, and permitting the Jacksonville station to operate as a satellite of station WFXI(TV); and DISMISSED in all other respects.

IT IS FURTHER ORDERED, That the "Joint Motion For Approval Of Settlement" filed February 1, 1993 IS GRANTED; the settlement agreement, as supplemented, IS APPROVED; the applications of Charles Fitzgerald and Webber/Moore Broadcasting Company, Limited ARE DISMISSED; and the application of Local Television Associates, Inc. IS GRANTED subject to the following condition:

That Local Television Associates, Inc. shall construct and maintain a main studio within six (6) months after the date of commencement of program test authority.

IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge

⁶ In its Supplement filed April 8, 1993, LTA has stated its intent to maintain a main studio for Jacksonville. Page 12, note 5.

BEFORE THE

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